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16 THOMAS A. DIBIASE

17 **UNITED STATES DISTRICT COURT**  
18 **FOR THE DISTRICT OF NEVADA**

19 RIGHTHAVEN LLC, a Nevada limited-liability )  
20 company, )

21 Plaintiff, )

22 v. )

23 THOMAS A. DIBIASE, an individual, )

24 Defendant. )

25 \_\_\_\_\_ )  
26 THOMAS A. DIBIASE, an individual, )

27 Counterclaimant, )

28 v. )

RIGHTHAVEN LLC, a Nevada Limited- )  
Liability Company, )

Counter-defendant. )

CASE NO.: 2:10-cv-1343 RLH PAL

**[PROPOSED] ORDER FINDING  
RIGHTHAVEN IN CONTEMPT OF  
COURT AND IMPOSING SANCTIONS**

1 This matter is before the Court on an Order to Show Cause why Plaintiff Righthaven LLC  
2 should not be held in contempt of court and sanctioned for failing to comply with the Court's Order  
3 (Dkt. # 107). A written response to the Order to Show Cause was due on March 16, 2012, and the  
4 matter was set for hearing on March 20, 2012. Plaintiff's Counsel did not respond to Defendant's  
5 Motion for Order to Show Cause (Dkt. # 106), did not comply with the Order to Show Cause  
6 (Dkt. # 107), and did not appear at the hearing (Dkt. # 108), despite having received notice from  
7 the Court of the date and time of the hearing.

### 8 **Background**

9 On January 24, 2012, the court held a hearing on Defendant Thomas DiBiase's Motion for  
10 Judgment Debtor Examination ("JDE") (Dkt. # 98). At the hearing, Plaintiff's counsel agreed to  
11 produce a copy of the transcript of the January 9, 2012 JDE of Plaintiff's Chief Executive Officer,  
12 Steve Gibson, and Plaintiff's Chief Administrative Officer, Raisha Gibson, taken in *Righthaven v.*  
13 *Hoehn*, Case No. 2:11-cv-00050-PMP-RJJ, in lieu of having the witnesses sit for another JDE in  
14 this case. Plaintiff's counsel also agreed to produce certain documents related to the requested JDE.

15 Based on the parties' representations, the court denied Defendant's motion as moot and  
16 without prejudice, directing the parties to submit a proposed stipulation summarizing their  
17 agreement about the JDE and document production by January 27, 2012. *See* Minute Order  
18 (Dkt. # 101). Counsel for Plaintiff agreed to produce the documents produced in *Hoehn*, and the  
19 *Hoehn* JDE transcript, by February 7, 2012. Additional documents requested by Defendant would  
20 be produced by February 14, 2012. Defense counsel prepared a stipulation memorializing this  
21 agreement and sent it to Plaintiff's counsel to review. Plaintiff's counsel added a paragraph stating  
22 that Plaintiff might be unable to produce some of the requested documents by February 14, 2012.  
23 Defense counsel agreed to the revision, added language requiring Plaintiff to submit a declaration  
24 detailing its good faith efforts to comply, and returned the stipulation to Plaintiff's counsel.  
25 Plaintiff's counsel did not respond after this proposed revision, despite defense counsel's attempts  
26 to contact him on January 26 and 27, 2012. *See generally* Opsahl Declaration (Dkt. # 106-1) at  
27 ¶¶ 3-5.

1 On January 30, 2012, Defendant filed a Notice (Dkt. # 102) informing the court why no  
2 stipulation had been filed. The court set a status hearing for February 9, 2012. *See* Dkt. # 103. On  
3 February 6, 2012, counsel filed the Stipulation (Dkt. # 104), and the court approved it in an Order  
4 (Dkt. # 105) entered February 7, 2012. The Order outlines Plaintiff's document production  
5 obligations. *See* Dkt. # 105. Defendant represents that Plaintiff did not comply with the Stipulation  
6 in a timely manner, and on February 8, 2012, Plaintiff produced only redacted copies of some of its  
7 bank statements. Defendant did not receive the *Hoehn* deposition transcript or other documents  
8 outlined in the Order. *See* Opsahl Declaration at ¶6. The parties' stipulation (Dkt. # 104) did not  
9 request that the status hearing be vacated. Counsel for Defendant appeared, but counsel for Plaintiff  
10 did not. As the parties had submitted the stipulation, the court inferred counsel for Plaintiff  
11 believed the matter had been resolved and that no hearing was required, and so advised counsel for  
12 the Defendant. As a result, the scheduled February 9, 2012 status conference did not go forward.

13 On February 15, 2012, counsel for Defendant wrote to Plaintiff's counsel requesting  
14 compliance with the Stipulation. Plaintiff's counsel responded that he would respond "as soon as  
15 possible. If I can do so today, I will." Defense counsel attempted to contact Plaintiff's counsel three  
16 additional times, without response. Defendant has still not received Plaintiff's court-ordered  
17 document production. Opsahl Declaration at ¶¶ 8-11.

18 On March 2, 2012, the Court granted Defendant's Motion for Order to Show Cause, and  
19 ordered Plaintiff to show cause, in writing, why it should not be held in contempt of court and  
20 sanctioned for failing to comply with the Court's Order (Dkt. # 105) by March 16, 2012. Plaintiff  
21 did not respond or seek an extension of time to respond. A hearing was set for March 20, 2012  
22 before Magistrate Judge Leen. Righthaven did not appear (Dkt. # 108).

### 23 Discussion

24 A court may issue civil contempt sanctions for the purpose of coercing a party to comply  
25 with a court order, to compensate the party seeking sanctions for losses incurred, or both. *Whittaker*  
26 *Corp. v. Execuair Corp.*, 953 F.2d 510, 517 (9th Cir. 1992). Both are proper here. "[A] district  
27 court is justified in adjudging a person to be in civil contempt for failure to be reasonably diligent  
28 and energetic in attempting to accomplish what was ordered." *Bad Ass Coffee Co. of Hawaii, Inc.*

1 v. *Bad Ass Coffee Ltd. Partnership*, 95 F. Supp. 2d 1252, 1256 (D. Utah 2000) (citation omitted)  
2 (footnote omitted). Where a court “order unequivocally directs an organization to produce records,  
3 the persons who have knowledge of the court’s action and who ‘fail to take appropriate action  
4 within their power’ to comply with the subpoena or order may be held in contempt.” *United States*  
5 v. *Voss*, 82 F.3d 1521, 1536 (10th Cir. 1996).

6 “A command to a corporation is in effect a command to those who are officially  
7 responsible for the conduct of its affairs.” *N.L.R.B. v. Sequoia Dist. Council of Carpenters, AFL-*  
8 *CIO*, 568 F.2d 628, 634 (9th Cir. 1977) (quoting *United States v. Greyhound Corp.*, 363 F. Supp.  
9 525, 571 (N.D.Ill.1973), *aff’d*, 508 F.2d 529 (7th Cir. 1974)). Accordingly, the order to Righthaven  
10 was in effect, a command to Mr. Gibson, as Chief Executive Officer and Manager of Righthaven.  
11 As the person solely responsible for the conduct of Righthaven’s affairs, “[i]t is imperative that we  
12 hold these officers in contempt if [courts] are to have respect for and obedience to [court] orders in  
13 such cases.” *Id.*

14 Moreover, as the principal officer, Mr. Gibson is legally identified with Righthaven, and is  
15 therefore charged with notice. *See N.L.R.B.*, 568 F.2d at 633; *see also Colonial Williamsburg*  
16 *Found. v. Kittinger Co.*, 792 F. Supp. 1397, 1406 (E.D.Va.1992) (“[T]he case law establishes that  
17 an individual who is responsible for ensuring that a corporation complies with a court order cannot  
18 escape liability merely by removing himself from the day-to-day operations of the corporation and  
19 washing his hands of responsibility.”), *aff’d*, 38 F.3d 133 (4th Cir. 1994); *see also United States v.*  
20 *Laurins*, 857 F.2d 529, 535 (9th Cir. 1988) (“An order to a corporation binds those who are legally  
21 responsible for the conduct of its affairs. ... De facto as well as de jure officers are responsible for  
22 enabling a corporation to comply with orders directed to it.” (citations omitted)).

23 Accordingly,

24 **IT IS ORDERED:**

25 1. The Court finds that Righthaven and its Chief Executive Officer, Mr. Gibson have  
26 committed civil contempt of court by failing and refusing to comply with the Stipulated Order  
27 dated February 7, 2012 (Dkt. # 105), which required Righthaven to produce certain documents and  
28 the transcript of the January 9, 2012 JDE, and in addition by (1) failing to comply with the Court’s

1 Order to Show Cause (Dkt. # 106) and (2) failing to appear at the show-cause hearing held on  
2 March 20, 2012.

3 2. Righthaven shall pay a coercive sanction of \$500 each day from the entry of this  
4 contempt order until Righthaven purges itself of contempt by complying fully with the February 7  
5 Order.

6 3. Righthaven is sanctioned \$3,412.50 as compensation for Mr. DiBiase's reasonable  
7 attorneys' fees in researching, drafting and filing Defendant's motion for an order to show cause  
8 and accompanying documents. The Court finds the fees and rates described in the Opsahl  
9 Declaration reasonable and necessary.

10 4. Righthaven shall file a declaration with the Court attesting to full payment of the  
11 attorneys' fees sanction to Mr. DiBiase's counsel within seven days of this order.

12 5. Mr. Gibson is the Chief Executive Officer of Righthaven, the Manager of  
13 Righthaven and is legally responsible for the conduct of its affairs. Righthaven and Mr. Gibson  
14 shall be jointly and severally liable for the sanctions imposed as a result of this order.

15 5. Righthaven and Mr. Gibson may purge their contempt at any time by fully  
16 complying with the February 7 Order and paying the then accrued sanctions imposed by this order.

17 6. If Righthaven and Mr. Gibson fail to purge themselves of contempt within twenty-  
18 one days after entry of this contempt order, the Defendant may seek further sanctions upon motion.

19  
20 DATED and DONE this \_\_\_\_ day of \_\_\_\_\_, 2012.

21  
22 \_\_\_\_\_  
23 UNITED STATES DISTRICT/MAGISTRATE JUDGE

24  
25  
26 Submitted by:  
27 Kurt Opsahl

28 By: /s/ Kurt Opsahl  
Kurt Opsahl, Esq.

**CERTIFICATE OF SERVICE**

Pursuant to Federal Rule of Civil Procedure 5(b) and as provided for under the applicable Local Rules of Civil Practice, I certify that on this 21st day of March, 2012, I caused a true and correct copy of the [PROPOSED] ORDER FINDING RIGHTHAVEN IN CONTEMPT OF COURT AND IMPOSING SANCTIONS to be served on all counsel properly registered and appearing in this action as listed in the Court's ECF system.

Dated: March 21, 2012

/s/ Kurt Opsahl  
KURT OPSAHL

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